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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/932,579	08/17/2001	Raymond C. Chen	103.1073.01	5199
22883	7590	07/20/2006	EXAMINER	
SWERNOFSKY LAW GROUP PC P.O. BOX 390013 MOUNTAIN VIEW, CA 94039-0013			CORRIELUS, JEAN M	
		ART UNIT	PAPER NUMBER	
			2162	

DATE MAILED: 07/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/932,579	CHEN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jean M. Corrielus	2162	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 April 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-29 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-29 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## **DETAILED ACTION**

1. This office action is in response to the amendment filed on April 27, 2006, in which claims 1-29 are presented for further examination.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-29 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The cited limitation "zombie filespace not accessible to users" renders the claim indefinite because it was an attempt to claim the invention by excluding what the inventors did not invent rather than distinctly and particularly pointing out what they did invent. In re Schechter, 205 F.2d 185, 98 USPQ 144 (CCPA 1953). Applicant should duly note that any negative limitation or exclusionary proviso must have basis in the original disclosure. The mere absence of a positive recitation is not basis for an exclusion. Note that a lack of literal basis in the specification for a negative limitation may not be sufficient to establish a prima facie case for lack of descriptive support. Ex parte Parks, 30 USPQ2d 1234, 1236 (Bd. Pat. App. & Inter. 1993). Claim 5 recites "for an operation performed on a file having attached data elements,

performing said operation using said zombie filesystem". It is unclear as to what the applicant meant to accomplish. It is also not clear as what operation the applicant wants to perform by using the zombie filesystem. Such limitation as claimed does not have any relationship or link to the other limitation of the claim. Claim 6 contains the same informality, there is no relationship with the limitation "for an operation performed using said zombie filesystem, altering a size of said zombie filesystem during performance of said operation". How one having ordinary skill in the art would know how big or small the size of the zombie filesystem without having specifying the size and what kind of operation would the applicant performs using the zombie filesystem.

Claim 15 recites "dynamically growing said zombie filesystem". It is not how one having ordinary skill in the art would grow a zombie filesystem and how this limitation related to the step of moving at least some blocks. Claims 18-20 recite "transfer of a file from said live filesystem to said zombie filesystem before breakage of links to blocks in said file, in response to an operation on said file. It is not clear as to what operation one having ordinary skill in the art would be doing before breakage of links to blocks. Claims 21-23 recite "transfer of a file from said live filesystem to said zombie filesystem before performing any portion of an operation. It is not clear as to which portion of the operation would perform by one having ordinary skill in the art. Claims 25-29 recite replay of an operation on a file". It is unclear as to what kind of operation the applicant would replay on the file. Why the applicant is relied on replay without having play what ever the operation the applicant would perform on the file.

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed. In particular, the claimed feature of "Zombie filesystem not accessible to users"; "breaking links associating disk blocks"; "dynamically growth" are not described in the specification to enable one having ordinary skill in the art to make and use the invention. The specification paragraph [0015] describes that the file system includes a separate portion reserved for files having extra-long operations in progress, including file deletion and file truncation; this separate portion of the file system is called the zombie filesystem. The zombie filesystem includes a separate name space from the regular ("live") file system and is maintained as part of the file system when recording a consistency point, just like the live filesystem. The live filesystem refers to those files that are accessible to users in normal operation, such as for example those files for which a path can be traced from a root of a hierarchical namespace. However, such mention of the specification does not indicate that the zombie filesystem is not accessible to users. Based on the analysis provided above and substantial evidence or reasoning, the examiner provided that one having ordinary skill in the art would not recognize in the disclosure a description of the invention defined by the claims. The limitation as claimed "Zombie filesystem not accessible to users"; "breaking links associating disk blocks"; "dynamically growth" are not supported by the as-

filed disclosure, which is violated the written description requirement. *In re Rasmussen*, 650 F.2d 1212, 211 USPQ 323 (CCPA 1981). Applicant should duly note that the first paragraph of 35 U.S.C. 112 requires that the “specification shall contain a written description of the invention”. Applicant should also note that the essential goal of the description of the invention requirement is to clearly convey the information that an applicant has invented the subject matter which is claimed; and to put the public in possession of what the applicant claims as the invention.” Furthermore, the written description requirement of the Patent Act promotes the progress of the useful arts by ensuring that patentees adequately describe their inventions in their patent specifications in exchange for the right to exclude others from practicing the invention for the duration of the patent's term. Indeed, the specification does not satisfy the written description requirement because the specification does not describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention.

7. Claim 16 recites the limitation "said dynamic growth" in step (b). There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 101***

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims 1-29 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter, specifically, as directed to an abstract idea.

Claims 1-29 in view of MPEP section 2106 IV.B.2. (b) define non-statutory processes because they merely manipulate an abstract idea without a claimed limitation to a practical application. The language of the claim raises a question as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101. Data structure not claimed as embodied in computer-readable media is descriptive material per SE and is not statutory because they are neither physical nor statutory processes. Structural and functional interrelationship with a general-purpose computer for permitting claimed functions to be realized are not provided in the claims. In contrast, a claimed system should define structural and functional interrelationships between data structures or functional parts and a computer system which permit the data functions to be realized, and is statutory. Thus, the claimed are rejected as being non-statutory. Additionally, the invention, as claimed, is directed to the manipulation of an abstract idea with no practical application in the technology arts.

The Supreme Court has repeatedly held that abstractions are not patentable. "An idea of itself is not patentable". Rubber-Tip Pencil Co. V. Howard, 20 wall. 498, 07. Phenomena of nature, though just discovered, mental processes, abstract intellectual concepts are not

patentable, as they are the basis tools of scientific and technological work Gottschalk V. Benson, 175 USPQ 673, 675 (S Ct 1972). It is a common place that laws of nature, physical phenomena, and abstract ideas are not patentable subject matter Parker V. Flook, 197 USPQ 193, 201 (S Ct 1978). A process that consists solely of the manipulation of an abstract idea is not concrete or tangible. See In re Wamerdam, 33 F.3d 1354, 1360, 31 USPQ2d 1754, 1754, 1759 (Fed. Cir. 1994). See also Schrader, 22 F.3d at 295, 30 USPQ2d at 1459.

Claims 1-29 are directed to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101. Even though there is physical transformation performed in the claim, however, such physical transformation does not produce a useful, concrete and tangible result. The claims 1-29 recite, “moving at least some blocks of a file from said live filesystem to said zombie filesystem; and recording changes to said zombies filesystem in a persistent memory; for an operation performed on a file having attached data elements, performing said operation using said zombie file space”. Such a limitation does not produce any useful, concrete and tangible result. It appears to have no operational use with the result of the recording changes to said zombie filesystem. The applicant does not provide any substantial evidence as to whether such result of the recording changes to said zombie filesystem has used to produce any useful, concrete and tangible result. Applicant is advised to amend the claims to show the series of steps as recited in claim 1 produce a tangible result being executed by a general-purpose computer in order to correct the above indicated deficiencies.

***Remark***

10. Applicants asserted, response mailed on 10/14/05, that Hitz does not disclose “a zombie filespace accessible to users to which at least some blocks of a file can be moved”. The examiner disagrees with the precedent assertion. It is noted, however, that limitations that applicants are relied upon is not disclosed in the specification to enable one having ordinary skill in the art to make the invention. Applicant is advised to amend the claims or cancel the limitations from the claims. Applicant is reminded no new matter should be added.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

12. Claims 1-29 as best understood by the examiner are rejected under 35 U.S.C. 102(a) as being anticipated by Hitz, article entitled “File System Design for an NFS file server appliance”. As to claims 1-29, Hitz discloses every single limitation to the invention as claimed.

### Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean M. Corrielus whose telephone number is (571) 272-4032. The examiner can normally be reached on 10 hours shift.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jean M Corrielus  
Primary Examiner  
Art Unit 2162

July 14, 2006